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CLERK U.S. BANKRUPTCY COURT
Central District of California
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**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SAN FERNANDO VALLEY DIVISION**

In re:

Lydia E Harris

Debtor(s).

CHAPTER 7

Case No.: 1:96-bk-15521-GM

Adv No: 1:13-ap-01035-MT

**FINDINGS OF FACT AND CONCLUSIONS
OF LAW GRANTING THE TRUSTEE'S
MOTION FOR APPROVAL OF
COMPROMISE**

Date: October 23, 2014

Time: 9:30 a.m.

Courtroom: 302

Weinstein Weiss & Ordubegian LLP

Plaintiff(s),

v.

Helen Ryan Frazer, Michael Ray Harris,
Wasserman, Comden & Cassleman, LLP

Defendant(s).

These findings of fact and conclusions of law are submitted with respect to a motion by Helen Ryan Frazer, chapter 7 trustee ("Trustee") of the bankruptcy estate of Lydia Harris, for approval of a compromise (as amended, doc. #200; the "Motion")

1 regarding Adv. No. 13-1035 GM (the "Adversary Proceeding").

2
3 **Procedural Background**

4 The Adversary Proceeding is a declaratory relief action brought by Weinstein,
5 Weiss & Ordubegian ("WWO") to resolve conflicting claims to a \$107 million judgment
6 issued on 3/9/05 (the "\$107M Judgment") by the Los Angeles County Superior Court in
7 favor of debtor Lydia Harris ("Debtor" or "Lydia Harris") and New Image Media Group
8 ("New Image", which is wholly owned by Debtor), against Death Row Records ("DRR")
9 and Marion "Suge" Knight ("Knight").
10

11 The defendants in the Adversary Proceeding were (1) the Trustee, (2) the
12 Debtor, (3) Wasserman, Comden & Casselman ("Wasserman"), which is the law firm
13 that represented Lydia Harris in the litigation that resulted in the \$107M Judgment, (4)
14 Michael Harris, Debtor's ex-husband asserting a community property interest in the
15 \$107M Judgment, (5) Conquest Media Group LLC ("Conquest"), an entity that had
16 asserted an assignment of the Debtor's interest in the \$107M Judgment, and (6) New
17 Image.
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19
20

21 **Findings of Fact**

22 The following findings of fact are based on evidence submitted to the Court that
23 has not been disputed by any party. (Unless otherwise noted, references to document
24 numbers (doc. #) are in Debtor's Bankruptcy case 96-15521-GM, references to "AP doc.
25 #s" are in the Adversary Proceeding, and references to exhibits are to those attached to
26 the FAC (defined below).)
27

28 1. Debtor filed for Chapter 7 relief on 5/17/96. (Debtor was apparently a 50%

1 shareholder in DRR at the time the petition was filed, but failed to list this asset in her
2 schedules.) Debtor was denied a discharge under 11 U.S.C. §727 on 7/21/97 and the
3 case was closed, without administration of any assets, on 12/15/99 (doc. #80).

4 2. Debtor entered into the written contingent fee agreement with Wasserman on
5 1/25/02 (exh. 2). On 2/26/02 Wasserman filed Debtor's complaint against DRR, Knight
6 and others in Los Angeles Superior Court (exh. 3). Wasserman prosecuted this lawsuit
7 and on 3/9/05 the Superior Court issued the \$107M Judgment (exh. 1), on default, after
8 striking DRR and Knight's answer.
9

10 3. On 5/19/05, Debtor fired Wasserman and Wasserman filed a notice of
11 Attorney Lien (in L.A. Superior Court) for 40% of payments received on the \$107M
12 Judgment (exh. 4).
13

14 4. On 5/20/05 and 5/27/05, Knight paid Debtor \$1 million, in partial payment on
15 the \$107M Judgment (Declaration of Helen Ryan Frazer submitted in support of Motion
16 for Default Judgment (AP 08-01488 doc. #16) ¶¶ 6, 7). Debtor neither informed
17 Wasserman of these payments nor paid any part of this money to Wasserman
18 (Declaration of David Casselman in support of Motion to Approve Compromise (doc.
19 #170) ¶ 11).
20

21 5. In December 2005, the Monterey Superior Court entered a judgment of
22 dissolution of the marriage of the Debtor and Michael Harris (the "Dissolution
23 Judgment"). See Opposition (defined below) at 3:6-7. The Dissolution Judgment
24 (which is attached to Mr. Harris's proof of claim in the DRR Case and thus part of
25 Exhibits 8A & 8B to the FAC) stated that the \$107M Judgment was community property,
26 but the allocation between Lydia and Michael was reserved (Dissolution Judgment ¶
27 13). A trial on allocation was set for January 30, 2006 (*Id.* ¶ 19). (It does not appear
28

1 that the trial and allocation ever occurred. Recital G. to the 2008 Settlement Agreement
2 (defined below) stated that the allocation had never been adjudicated. Michael has
3 referred repeatedly to the Dissolution Judgment, but has not referred to any further
4 allocation.) The Dissolution Judgment also states that "[o]f the monies received by
5 [Debtor] from Marion Knight to date," \$179,000 shall be paid to Mr. Harris (Dissolution
6 Judgment ¶ 1).

8 6. On 4/4/06 Knight and DRR filed for chapter 11 relief in the Central District of
9 California, Case Nos. 06-11187-VZ and 06-11205-VZ. (Both cases were subsequently
10 converted to Chapter 7s on 11/25/09 and consolidated (the "DRR Case" and the "DRR
11 Estate").)

13 7. During 2006, the Debtor, Michael Harris (who asserts a community property
14 interest in the \$107M Judgment pursuant to the Dissolution Judgment) and Wasserman
15 all filed proofs of claim based on the \$107M Judgment in the DRR Case (exhs. 6A, 6B,
16 8A, 8B, 9A & 9B).

18 8. On 6/12/06, Debtor hired WWO to represent her in the DRR Case. The
19 "Retention Agreement" (exh. 7 filed under seal) provides for WWO to be retained (on an
20 hourly basis) and also expressly grants WWO an attorney's lien on any recovery from
21 the DRR Case, including recovery on the \$107M Judgment.

23 9. On 8/21/07, the Debtor's chapter 7 was reopened (doc. #85), on motion made
24 by the Trustee after she learned of the \$107M Judgment and determined that it might
25 be based on Debtor's rights existing on the petition date.

27 10. On 2/8/08, the trustees in the DRR Case, the Trustee, the Debtor, Michael
28 Harris and Conquest entered into an Agreement and Mutual Release (exh. 1 to the
Opposition; the "2008 Settlement Agreement"), which (i) allowed Debtor, Michael Harris

1 and Conquest's collective claims in the amount of a \$30 million unsecured claim and a
2 \$15 million subordinated claim and (ii) contained detailed provisions for when these
3 claims would receive distributions relative to other claims. The 2008 Settlement
4 Agreement also provided that Debtor, Michael Harris, Conquest and Trustee would
5 reach a separate agreement on what portion of this distribution the Trustee would
6 receive (*Id.* ¶ 3.f). The 2008 Settlement Agreement was approved and the Trustee was
7 authorized to take action pursuant to its terms by order entered 6/6/08 (doc. #105, order
8 signed by Zurzolo, J.)

10 11. On 8/22/08, the Trustee filed adversary proceeding 08-01488-GM seeking to
11 recover the \$1 million paid to Debtor by Knight, on grounds it was property of the estate.
12 On 9/15/09, the Court entered a default judgment of \$1 million against Debtor in favor of
13 the Trustee (exh. 14; the "Trustee's Judgment").

15 12. In September 2008, WWO withdrew as counsel for the Debtor. WWO
16 alleges that it is owed over \$500,000 by the Debtor and filed notices of attorney's lien in
17 the Lydia Harris, DRR and Knight bankruptcies (exhs. 18, 19 & 20).

19 13. On 2/15/13 WWO filed a complaint commencing the Adversary Proceeding,
20 after it became apparent that there would be a small distribution in the DRR Case and
21 the parties became more interested in resolving their rights to this distribution (AP doc.
22 #1).

23 14. On 4/9/13, the Trustee filed an abstract of the Trustee's Judgment in the Los
24 Angeles County Recorder's office (exh. 15B). In August 2013, the Trustee filed a Notice
25 of Lien based on the Trustee's Judgment (i) in the DRR Case and (ii) with the Secretary
26 of State (Trustee's Motion to Dismiss Adversary Proceeding (AP doc. #70) exhs. 4 & 5).

28 15. The original complaint in the Adversary Proceeding was dismissed with

1 leave to amend by order entered 7/23/13 (AP doc. #48). WWO filed a First Amended
2 Complaint (AP doc. #64; the "FAC") on 8/12/13. The FAC asserts three claims for
3 relief, seeking judicial determinations that:

- 4 • WWO has a fully enforceable lien against the \$107M Judgment and
5 related assets;
- 6 • the \$107M Judgment and related assets are not part of the Debtor's
7 estate (or if they are part of the estate seeking apportioning between
8 estate and non-estate portions); and
- 9 • WWO has priority over other interests in the \$107M Judgment and related
10 assets (or alternatively, in the case of Wasserman, is at least *pari passu*).
11

12
13 16. On 9/12/13, the Trustee filed a Motion to Dismiss the FAC, which was
14 denied (doc. #s 90, 91).

15 17. On 10/21/13, the Clerk of the Court entered a Default against Conquest,
16 New Image and Lydia Harris (AP doc. #s 76, 77, 78). On 3/7/14, a default judgment
17 was entered against Conquest, New Image and Lydia Harris (AP doc. #113). (Lydia
18 Harris' subsequent motion to set aside the default judgment entered against her was
19 denied (doc. #s 135, 138).) Thus, only remaining defendants litigating in this proceeding
20 are the Trustee, Wasserman and Michael Harris.
21

22 18. On 11/14/13 WWO, Wasserman, the Trustee and Michael Harris entered
23 into a stipulation (AP doc. #87), which provides that any distribution from the DRR Case
24 would be paid to the Trustee to hold as custodian pending resolution of the conflicting
25 claims to the money.
26

27
28 **Conclusions of Law**

1 19. The Trustee is seeking approval of a compromise pursuant to Fed. R. Bankr.
2 P. 9019, thus the question is whether the Settlement is fair, reasonable and adequate to
3 the estate under the factors articulated by the Ninth Circuit:

4 In determining the fairness, reasonableness and adequacy of a proposed
5 settlement agreement, the court must consider: (a) The probability of success in
6 the litigation; (b) the difficulties, if any, to be encountered in the matter of
7 collection; (c) the complexity of the litigation involved, and the expense,
8 inconvenience and delay necessarily attending it; (d) the paramount interest of
9 the creditors and a proper deference to their reasonable views in the premises.

10 *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. Cal. 1986), *cert. denied sub nom.*,
11 *Martin v. Robinson*, 479 U.S. 854 (1986). The Court is not required to take evidence
12 and decide questions of law or fact. Instead, the Court should review the issues and
13 determine whether the "settlement falls below the lowest point in a range of
14 reasonableness." *In re Teletronics Service, Inc.*, 762 F.2d 189 (2nd Cir. 1985).

15 20. By the Court's calculations, the estate will receive approximately \$261,000,
16 which is a little more than half of the Preliminary Distribution. Trustee states that this
17 amount will pay administrative expenses and possibly allow for a distribution to
18 creditors. It also resolves a number of outstanding claims that were causing significant
19 litigation. The Trustee is giving up any rights to share in further distributions. The
20 Trustee has concluded that the Settlement is fair and equitable and in the best
21 interests in the estate because it avoids costly further litigation and uncertainty while
22 giving the estate a substantial up-front payment that will allow payment of administrative
23 expenses and probably some portion of unsecured claims. It will thus allow the timely
24 wind up of the Debtor's estate **after 18 years**. This Settlement easily meets the
25 standards for approval; it is a sound exercise of the Trustee's business judgment and
26 falls well within the range of reasonableness.
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21. Given the legal complexity of the issues that would ultimately determine

1 WWO, Wasserman and the Trustee's relative entitlement to distributions on account of
2 the \$107M judgment and the resulting uncertainty (all as outlined in detailed in the
3 Court's rulings on both motions to dismiss in the adversary proceeding (AP doc. ##s 43,
4 90)), (i) the probability of success and (ii) the complexity, expenses, inconvenience, and
5 delay factors both favor settlement.
6

7 22. Michael Harris is not listed in the Debtor's schedules as a creditor. He did
8 not file a proof of claim, and the time to do so has long run. He is simply not a creditor of
9 this estate. He may be entitled to be heard on whether this Settlement is fair and
10 equitable, as this Court previously found (Memorandum of Decision entered June 3,
11 2013 (doc. #184) at 15:3-8), but he stands to receive funds solely through his
12 community property rights *vis a vis* Lydia Harris. He has appeared through a number of
13 different attorneys in this case and has yet to clearly articulate any theory of his rights
14 other than what he might receive through community property distributions to Lydia
15 Harris.
16

17 23. Mr. Harris argues that the litigation is neither complex nor expensive.
18 However, his assertion is not persuasive. Having devoted considerable attention to this
19 matter, the Court understands that the issues are complex. The litigation is particularly
20 expensive relative to the amount of money at issue and could easily preclude any
21 meaningful recovery by the estate. The litigation to date has been complex and
22 extremely costly, and the many parties have just gotten past the pleading stage. It
23 would also cause great delay and inconvenience to the administration of this estate - a
24 1996 bankruptcy case that should be wrapped up.
25

26 24. The difficulty of collection is not relevant as any distributions will be received
27 by the Trustee directly from the DRR Estate, to be held pending resolution.
28

1 25. The interests of creditors strongly favor the Settlement. The Trustee has
2 concluded they will likely receive a distribution under the Settlement, or that this is the
3 only chance they have at a distribution. If the Trustee is required to litigate all of this to
4 the end, it is unlikely creditors will receive anything and the administrative expenses
5 may not even be covered. This payment can be made soon, and the estate can be
6 wound up. Given the costs and risks of litigation, the Settlement appears be only way
7 for the Trustee to even have a chance to make any meaningful distribution to creditors.
8 Mr. Harris argues that the Settlement is not in the best interests of creditors, but he
9 bases that conclusion on the fact that it is not in *his* best interest, which is not the
10 relevant inquiry. Without articulating how exactly he stands to receive anything, he
11 would like to deny anything to any other creditor through requiring additional litigation.
12

13 26. Michael Harris had originally been a party to the Settlement, but then
14 withdrew and is now arguing that the Settlement cannot proceed without his consent.
15 (He has recently retained new counsel, and current counsel does not appear to have
16 the benefit of lengthy hearings, rulings and documents filed earlier in the bankruptcy
17 and adversary cases.) Mr. Harris asks the Court to reject the Settlement because it
18 ignores his rights as a major creditor, arguing that WWO has never shown how its rights
19 in the \$107M Judgment are superior to Mr. Harris's rights.
20

21 27. Mr. Harris, in fact, has not ever articulated a legal theory why his interest in
22 the \$107M Judgment is either senior or *pari passu* to WWO, Wasserman and the
23 Trustee. The Court has previously concluded that the Debtor's (and thus Mr. Harris's
24 community property) rights in monies to be paid from the DRR Estate were subordinate
25 to liens on the \$107M Judgment (Memorandum of Decision entered June 3, 2013 (doc.
26 #184) at 16:4-19). (And, of course, the pre-petition portion of the \$107M Judgment is
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1 simply part of the estate. *Id.*) Mr. Harris offers neither facts nor law to disturb that
2 conclusion. He argues that the December 2005 Dissolution Judgment granted him
3 community property rights, but does not explain why those community property rights
4 are anything but an equity interest shared with the Debtor and thus subordinate to all
5 existing liens on the \$107M Judgment.
6

7 28. The Dissolution Judgment stated that the \$107M Judgment was community
8 property, but the allocation between Lydia and Michael was reserved (and does not
9 appear to have occurred). Nothing in the Dissolution Judgment changes the Court's
10 earlier conclusion that Michael shares community property ownership of the \$107M
11 Judgment, subject to all liens on that judgment.
12

13 29. Mr. Harris argues that the 2008 Settlement precludes this Settlement,
14 although his reasoning is again not articulated and is inconsistent with the Court's
15 reading of the 2008 Settlement Agreement. The 2008 Settlement was between the
16 DRR parties, on the one hand, and the Trustee, Debtor and Mr. Harris, on the other. It
17 set the amount and treatment of the claim against the DRR Estate based on the \$107M
18 Judgment, but left allocation of that claim to be resolved by the Trustee, Debtor and Mr.
19 Harris. Wasserman and WWO were not parties to the 2008 Settlement, so it does not
20 bind them.
21

22 30. Mr. Harris also argues against recovery by Wasserman and WWO on
23 equitable grounds: "What kind of contingency fee is it when the lawyers get 100% and
24 the client gets nothing?" (Opposition at 8:21-9:2) This argument ignores the plain facts.
25 The Debtor received (prior to the Dissolution Judgment), \$1 million from Knight on
26 account of the \$107M Judgment. Under the Dissolution Judgment, Mr. Harris received
27 \$179,000 of the money left in the community from that payment. The equities are
28

1 against Mr. Harris: he is the only current party in the Adversary Proceeding to have
2 received anything on account of the \$107M Judgment to date. He may have a dispute
3 with Lydia Harris, but the Trustee also did not receive any of that \$1 million.

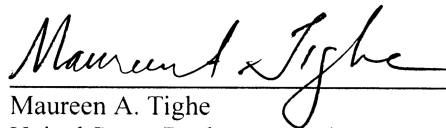
4 31. The standards for approval require the Court to defer to the business
5 judgment of the Trustee and approve any reasonable settlement. Given the importance
6 of the Settlement for the estate to actually receive any benefit from the \$107M
7 Judgment, not approving the Settlement would be wholly unreasonable. Mr. Harris's
8 repeated, but wholly unsupported, assertion of rights to the \$107M Judgment does not
9 change that conclusion.
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13 **Conclusion**

14 For the reasons stated above, the Motion is GRANTED.

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25 Date: November 4, 2014

26 
27 Maureen A. Tighe
28 United States Bankruptcy Judge